

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**WRIT PETITION No.10990 of 2021****ORDER:**

This Writ Petition is filed for the following relief:

“...to issue a Writ Order or direction more particularly one in the nature of Writ of mandamus to declare the impugned punishment orders issued vide Procd.No.Vig (2)/7047/KHMM/01-02, dated:11.08.2006, issued by the 2nd respondent and which was slightly modified by G.O.Rt.No.65 Housing (VIG.CELL) Department, dated:22.09.2020 issued by the 1st respondent, whereas the same punishment orders issued against another co-delinquent has been cancelled by the 1st respondent vide G.O.Rt.No.78 Housing Department, dt:11.04.2011, consequent on the common acquittal orders passed in CC.No.420/06, dated:25.02.2009, and failed to extend the same benefits of cancellation orders to the petitioner amounts to clear discrimination, illegal, arbitrary, and contrary to the law declared in case of D.Srinivas vs State of A.P. reported in 2013 (4) ALT Page 1 (D.B.), accordingly, set aside the impugned punishment orders, dated:11-08-2006, and 22.09.2020 and consequently direct the respondents to release all the pensionary benefits to the petitioner immediately and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case.”

This Court has heard Sri Ramalingeswara Rao Kocherlakota and Sri Rajesh Maddi, learned counsel representing the learned Government Pleader for Services-IV.

With the consent of all the learned counsel, the Writ Petition itself is taken up for hearing.

The petitioner along with two other employees of the 2nd respondent-Corporation were charge sheeted and found guilty

in a departmental enquiry. Learned counsel for the petitioner points out that orders were passed against all the three officers to recover a sum of Rs.8,48,000 in the ratio of 20:30:50. As far as the present petitioner is concerned a sum of Rs.2,54,400/- was proposed to be recovered and a further punishment of stoppage of five annual grade increments with cumulative effect was given. The petitioner and the other co-delinquents took up the matter with the Government, which thereafter reduced the punishment, as far as petitioner is concerned to stoppage of five annual grade increments without cumulative effect, besides the recovery of Rs.2,54,400/- with 12% interest. Similarly, the punishment in cases of other employees were also modified. Learned counsel also points out that the criminal case filed against the petitioner in C.C.No.42 of 2006 ended in acquittal. This was brought to the notice of the State. Apart from this learned counsel for the petitioner points out that out of three employees, who were charge sheeted, the case against one employee was totally dropped, by G.O.Rt.No.78 was issued on 11.04.2011 cancelling the punishment imposed against Mr.V.Ramulu. Learned counsel submits that since the accusation against all the three is common and they were all initially found to be guilty and the money was sought to be recovered in certain proportion, the order by which the punishment is dropped against Mr.V.Ramulu is clearly discriminatory. He relies upon a Division Bench judgment reported in **D.Srinivas v**

Government of A.P. Transport, Roads and Buildings (Vig.I)

Dept., and Others¹, to argue that the action of the respondents in imposing penalty on a petitioner alone while dropping the action against the co-delinquents amounts to discrimination. Therefore, learned counsel prays for an order.

Sri Rajesh Maddi, learned counsel representing the State argues the punishment was imposed after an enquiry. Basing on the acquittal in the criminal case and other factors the punishment was also modified. He, therefore, submits that once loss is caused to the Government, the petitioner cannot claim that he should be exonerated. He submits that in such cases the proceedings should be allowed to go to their logical conclusion and should not be stopped. He relies upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 5153 of 2021, in support of his contention. As far as the Division Bench judgment is concerned he submits that it is clearly distinguishable on facts. Therefore, learned counsel argues that as the State has sustained loss the petitioner cannot claim any relief in this case unless the loss is recouped.

COURT:

This Court after considering the submissions made notices that there is no serious dispute in this case about the facts. The counter also supports what has been stated earlier. It is fact that three officials were charge sheeted and

¹ 2013 (4) ALT 1 (D.B.)

punishment was imposed on all the three, recovery was also directed to be made from all the three employees. However, post acquittal in a criminal case by proceedings dated 11.04.2011, the entire punishment imposed against one delinquent was dropped. The recovery was also waived. The representation of the petitioner to the respondents for an equal treatment did not result in any substantive relief except that the punishment was modified to recovery and stoppage of annual grade increments without cumulative effect. The counter affidavit filed does not explain why the petitioner was treated differently from the other co-delinquent Mr.V. Ramulu, against whom the punishment was cancelled. The Division Bench judgment relied upon by the learned counsel for the petitioner is the judgment in ***D. Srinivas v Government of Andhra Pradesh***². This Court notices that in that case there were two delinquents. When proceedings against one were dropped because he approached the Administrative Tribunal, the Division Bench clearly held that when proceedings were dropped against one delinquent, who was charged with identical charges, punishing the other is discrimination. The Division Bench also relied upon an unreported judgment of the Division Bench of the combined High Court also in paragraph 12. In the present case, the proceedings against Mr.V. Ramulu the 3rd delinquents were dropped by the Government. He did not secure any order from a Court for this purpose. The

² (2013) 4 ALT 1

Government in its discretion decided to drop the proceedings against Mr.V.Ramulu. In the opinion of this Court, the petitioner before this Court is on a stronger wicket. Even without a judicial pronouncement or judicial determination the proceedings were dropped against one co-delinquent, who was found jointly and severally liable. Allowing the State to recover the money from this petitioner is clearly discriminatory, in the opinion of this Court, particularly when Mr.V. Ramulu has been given a substantial relief by the State. The Division Bench judgment squarely applies to the facts and circumstances of the present case.

Hence, this Court is of the opinion that the petitioner is entitled to an order as prayed for. The punishment order dated 11.08.2006. which was modified by G.O.Rt.No.65, dated 22.09.2020 are hereby set aside. In view of the setting aside of these two orders the petitioner shall be entitled to all the consequential reliefs i.e., pension, gratuity etc.,

With these observations the Writ Petition is allowed. There shall be no order as to costs.

Consequently, the Miscellaneous Applications pending, if any, shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date:03.11.2021.

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